Supreme Court, U.S.
FILED
AUG 25 1999
OFFICE OF THE CLERK

No. 99-162

In The

Supreme Court of the United States

BRUCE JOHNSON,

Petitioner,

v.

GILA RIVER INDIAN COMMUNITY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF THE GILA RIVER INDIAN COMMUNITY

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QUESTION PRESENTED

Whether the District Court's dismissal of petitioner's claims against the Gila River Indian Community (the "Community") pursuant to 28 U.S.C. Section 1331 was improper and whether the District Court's decision was erroneously upheld by the Ninth Circuit Court of Appeals.

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

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STATEMENT OF THE CASE

Petitioner seeks this Court's review of whether his claim against the Community was improperly dismissed by both the District Court and the Ninth Circuit Court of Appeals. The Community, a federally recognized tribe, will demonstrate that the petition presented this Court misrepresents certain key facts underlying this matter and that no cause supports this Court's review of the petitioner's contentions.

The Community, which is comprised of the Pima and Maricopa tribes of Indians, is governed by Constitution and By-laws (1960) adopted pursuant to 25 U.S.C. Section 476. The Community's reservation, located in central Arizona and bounded by the greater Phoenix metropolitan area, was established under the Act of February 28, 1859, Ch. 66, 11 State. 388, 401 (the "Reservation").

Petitioner claims that federal court jurisdiction in this matter is properly founded in the Indian Civil Rights Act. 25 U.S.C. Section 1302. However, in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1977), this Court held that Indian tribes possess common law immunity from suit and no provision of the Indian Civil Rights Act permits this suit against the Community in federal court. Accordingly, the petitioner's claim that federal court jurisdiction is properly founded in the Indian Civil Rights Act was rejected by both the District Court and the Ninth Circuit Court of Appeals.

It is petitioner's further assertion that his action is one "arising under" federal law within the meaning of 28 U.S.C. Section 1331 and therefore properly within the District Court's jurisdiction. This complaint was rightly

dismissed by the lower courts because petitioner had failed to exhaust his remedies in the tribal judicial system, a requirement articulated in *National Farmers Union Insurance Cos. v. Crow Tribe*, 471 U.S. 845 (1985).

Petitioner's Statement of the Case, Part A., "Facts Material to Consideration of Questions Presented," contains numerous errors, omissions, and misrepresentations. To set the record straight respondent Community has included in this Objection, the Findings of Fact, Conclusions of Law and Judgment of the Community Court signed by the judge of the Community Court dated September 28, 1995. App. A (attached).

In 1966, the Community and Lone Butte Industrial Development Corporation (the "Lone Butte") entered into a lease for land which is known as Lone Butte Industrial Park (the "Park"). App. A2. In 1979, Lone Butte and Genstar Conservation Systems, Inc. entered into a lease for the purpose of processing rubber. *Id.* In 1987, Tonson, a Minnesota corporation, acquired Genstar's business and purchased rubber reclamation equipment, machinery, and a rubber inventory consisting of tires and raw materials. App. A3. Tonson agreed to assume sole responsibility for removal of the waste tires from the leased premises. *Id.*

After analyzing a series of transactions, the court found that the petitioner was responsible for the liabilities of Tonson. App. A12. The Court further found that Tonson was merely the "alter ego" of Bruce Johnson and in fact found that the corporate veil of Tonson had been pierced and that Bruce Johnson was personally responsible for Tonson's liabilities. *Id.* The Court further found

that Bruce Johnson was the owner of the equipment which is the subject of this controversy. App. A13. The petitioner also had assumed responsibility for the removal of approximately one million tires from the premises leased from the Lone Butte. App. A12. The Court further found that the petitioner was responsible for the liabilities of Tonson. App. A12.

Petitioner continues his specious allegations that his efforts to exhaust his remedies in Tribal Court were futile, even though such contentions were heard and rejected by the District Court and the Court of Appeals for the Ninth Circuit. In point of fact, on April 15, 1999, an Order was issued by the Community Court setting forth a briefing schedule. On July 23, 1999, a hearing was held before the Community's Court of Appeals, a three-judge panel. A decision is pending in the matter. App. B.

REASONS FOR DENYING THE WRIT

The petitioner's claim that the District Court and the Ninth Circuit improperly dismissed his claim does not warrant review by this Court. The decisions below were very plainly a correct application of settled law, and no conflict among the circuits or with a state court of last resort is even alleged. Although the petitioner's Claim for Allowance of the Writ is confusing and difficult to understand, it appears that the entirety of his claim is based on Rule 10(c), Rules of the Supreme Court of the United States, that this matter involves a question of federal law that has not been, but should be, settled by this Court.

In *National Farmers Union Insurance Cos. v. Crow Tribe*, 471 U.S. 845, 857 (1985), this Court demarcated the boundaries of tribal court jurisdiction, holding that 28 U.S.C. Section 1331 encompasses the federal question whether a tribal court has exceeded the lawful limits of its jurisdiction and that exhaustion in the tribal court is required before such a claim may be entertained by a federal court. Under *National Farmers*, the District Court's involvement in the resolution of petitioner's controversy is premature until such time as the Tribal Court has had a full opportunity to determine its own jurisdiction and to rectify any errors it may have made. In *National Farmers*, the court stated:

> We believe that examination should be conducted in the first instance in the Tribal Court itself. Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge. Moreover, the orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any questions concerning appropriate relief is addressed. *National Farmers Union Insurance Cos. v. Crow Tribe*, 856.

The petitioner asserts that *National Farmers* sets forth an exemption to the rule of exhaustion for which the decision is noted. The *National Farmers* Court, 856 Note 21, stated:

> We do not suggest that exhaustion would be required where an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith . . . or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction.

Petitioner's argument is based upon the flawed reasoning that a provision in the complaint filed in the District Court was based upon bias and prejudice and therefore fits within the "bad faith" exception contained in Note 21. First, the petitioner did not allege bad faith in his complaint and the bad faith alleged here is not sufficiently set forth in the Writ. In *National Farmers*, the Court quoted language from *Judice v. Vail*, 430 U.S. 327, 340 (1977) where the Court declined to intervene in state proceedings because there were no allegations specifically directed against the justices who had issued contempt orders. The bad faith exception, of course, must be construed narrowly and extraordinary circumstances must exist before intervention by the federal courts. *See Huffman v. Pursue, Ltd.*, 420 U.S. 592, 612 (1975).

The Writ must be denied.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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APPENDIX A

IN THE GILA RIVER INDIAN COMMUNITY COURT
COUNTIES OF PINAL & MARICOPA
IN THE STATE OF ARIZONA

LONE BUTTE INDUSTRIAL DEVELOPMENT CORPORATION, a corporation chartered by the Gila River Indian Community, Plaintiff, v. INTERNATIONAL RUBBER, INC., a defunct Arizona Corporation, BRUCE JOHNSON, Defendants.	Case No. CV93-357SC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT
BRUCE JOHNSON, Counter-claimant, v. LONE BUTTE INDUSTRIAL DEVELOPMENT CORPORATION, a corporation chartered by the Gila River Indian Community, Counter-defendant.	

The Court having heard the trial of this matter on January 16th and 17th, 1995, and having considered the post-trial briefs and response briefs submitted by the parties, hereby makes the following Findings of Fact and Conclusions of Law and issues the following Judgment:

FINDINGS OF FACT

1. On November 28, 1966, the Gila River Indian Community (the "GRIC") and Lone Butte Industrial Development Corporation, a corporation chartered by the GRIC ("Lone Butte"), entered into Lease No. B-GR-61 (the "Master Lease") relating to lands within the GRIC known as the Lone-Butte Industrial Park (the "Industrial Park").

2. On July 2, 1979, Lone Butte and Genstar Conservation Systems, Inc. ("Genstar") entered into Lease No. B-GR-61-T (the "Leased Premises"). Paragraph 8 of the Genstar Lease required Genstar to construct an improvement upon the Leased Premises with a value of at least $500,000.00. Genstar did in fact construct a metal building in which to conduct its business operations on the Leased Premises (the "Building").

3. Paragraph 4 of the Genstar Lease required Genstar to "use the Leased Premises to process discarded scrap rubber tires and other rubber materials," and expressly prohibited any change to this stated purpose without the prior written approval of Lone Butte and the GRIC.

4. Tonson, Inc., a Minnesota corporation ("Tonson"), was incorporated in December 1985. The two original shareholders of Tonson were Bruce Johnson and Milton LaPanta, who had formerly done business as Tonson Partnership. The assets of Tonson Partnership were transferred to Tonson, and Bruce Johnson and Milton LaPanta were each issued 750 shares of Tonson stock.

5. On May 11, 1987, Tonson acquired Genstar's ongoing business at the Leased Premises and the assets of

another rubber reclamation business in Chicago from GSX Polymers ("GSX") pursuant to a written agreement (the "Purchase Agreement"). The purchase price for the two businesses, a quantity of rubber reclamation equipment and other machinery (the "Equipment"), and a quantity of rubber inventory and raw materials was $675,000.00. The inventory and raw materials sold by GSX to Tonson included various quantities of tire chips, waste tires, crumb rubber, rubber buffings, "Penn Stock," and rubber peels.

6. Pursuant to the Purchase Agreement, GSX also transferred to Tonson its interest in the Genstar Lease and a Columbus-MacKinnon Tire Chipper machine then located in Vicksburg, Mississippi, to be transported to the Leased Premises at the expense of GSX.

7. Pursuant to Paragraph 2(c) of the Purchase Agreement, Tonson agreed to assume sole responsibility for eventual removal of the waste tires from the Leased Premises. At the time of the execution of the Purchase Agreement, there were approximately one million (1,000,000) waste tires stockpiled on the Leased Premises, which became the responsibility of Tonson.

8. Before Tonson entered into the Purchase Agreement with GSX, Bruce Johnson personally visited the Leased Premises for the purpose of deciding whether to loan the money for the acquisition to Tonson. Bruce Johnson did in fact loan the entirety of the purchase price to Tonson.

9. On May 14, 1987, Bruce Johnson, as the sole shareholder, called a special meeting of the shareholders of Tonson. During the meeting, it was agreed that Tonson

would enter into the Purchase Agreement with GSX, that Tonson would borrow the funds for the acquisition from Bruce Johnson, and that Tonson would give Bruce Johnson a security interest to secure repayment of the loan.

10. At the time that Tonson entered into the Purchase Agreement with GSX, the business at the Leased Premises lacked the equipment necessary to process whole waste tires, as required by Paragraph 4 of the Genstar Lease. The only materials that could be processed were tire buffings, tire peels, and Penn Stock, pure rubber products which did not contain any cord, metal, or fabric. This fact was known to both Bruce Johnson and Milton LaPanta at that time. However, if Tonson had received the Columbus-MacKinnon Tire Chipper machine, as stipulated by the Purchase Agreement, it would have been able to process whole waste tires.

11. On June 10, 1987, Bruce Johnson, as the sole shareholder, called another special meeting of the shareholders of Tonson. During the meeting, it was agreed that Tonson would grant Bruce Johnson "a security interest in and to all of the assets of the corporation located in Minnesota, Illinois and Arizona, including all machinery and equipment, inventory, accounts and notes receivable, and all leasehold and easement interests in real property, and all licenses and permits issued by public authorities in consideration for the sum of $648,973.21 loaned to the corporation by Bruce A. Johnson to acquire certain business and assets of GSX Polymers, Inc. located in Chicago, Illinois and Chandler, Arizona for the purpose of securing the repayment to Bruce A. Johnson of such loan."

12. Also on June 10, 1987, Bruce Johnson, as the secured party, and Milton LaPanta, as president of Tonson, as debtor, executed a security agreement (the "Security Agreement"), whereby Tonson, in exchange for a loan of $770,000.00 from Bruce Johnson, granted Bruce Johnson a security interest in certain property, including approximately one million (1,000,000) waste tires located on the Leased Premises acquired by Tonson from GSX pursuant to the Purchase Agreement.

13. On July 28, 1989, Bruce Johnson called a special meeting of shareholders of Tonson, at which he announced "that he was taking possession of all assets of the corporation secured to him by the Security Agreement dated June 10, 1987 executed by the corporation in his favor." The meeting minutes indicate that among the reasons for Bruce Johnson's foreclosure was the fact that the State of Minnesota "was seeking reimbursement from the corporation for costs the [Minnesota] Pollution Control Agency and the City of Andover [Minnesota] had incurred in extinguishing the fire that occurred at the Andover Dump last February [1989]." The minutes also state that Bruce Johnson "announced that he would seek a buyer of the assets of which he was taking possession, and that pending such a sale, he would allow the corporation to lease the equipment and occupy the Arizona premises, and act as his collection agent to collect the accounts receivable."

14. As a result of the July 28, 1989 foreclosure, Bruce Johnson became the owner of all property of Tonson located in Minnesota, Illinois, and Arizona, including the approximately one million (1,000,000) waste tires located on the Leased Premises and Tonson's leasehold interest

under the Genstar Lease. As the lessee under the Genstar Lease, Bruce Johnson assumed the obligation to leave the Leased Premises "in a clean and orderly condition" upon expiration or termination of the lease term, as provided by Paragraph 8(C) of the Genstar Lease.

15. On August 1, 1989, Bruce Johnson, as Lessor, and Tonson, as Lessee, entered into a written lease agreement whereby Bruce Johnson leased the Equipment to Tonson (the "August 1989 Equipment Lease").

16. Thereafter, on October 2, 1989 and October 3, 1989, Tonson caused identical financing statements to be filed with the Arizona Secretary of State and recorded with the Maricopa County Recorder, respectively. The financing statements covered: "All machinery, equipment, fixtures, processed and unprocessed rubber and inventory situated on the premises located at 6733 West Willis Road in the Lone Bute [sic] Industrial Park on Pima Indian property in Chandler, Arizona, including, but no limited to, those items listed on the attached list.

17. Tonson conducted business operations at the Leased Premises through March 31, 1990, and made rental payments directly to Lone Butte under the Genstar Lease. The fifth annual meeting of shareholders of Tonson, Inc. was held on February 15, 1990. During the meeting, Bruce Johnson, as the sole shareholder, announced that he was terminating the operations of Tonson effective March 31, 1990.

18. The Leased Premises was next occupied by Milton LaPanta, d/b/a/ International Rubber, which was incorporated as International Rubber, Inc. ("International Rubber"), and Arizona corporation, on May 23, 1990. By a

lease agreement dated April 11, 1990, Bruce Johnson leased the Equipment to International Rubber (the "April 1990 Equipment Lease").

19. Tonson, International Rubber, and Milton LaPanta made rental payments to Bruce Johnson under the August 1989 and April 1990 Equipment Leases in the form of promissory notes. The promissory notes are dated up through the Spring of 1994.

20. Beginning in early 1991, Lone Butte stopped receiving the rental and other payments due under the Genstar Lease. As a result, Lone Butte terminated the Genstar Lease on March 1, 1991.

21. Upon the termination of the Genstar Lease, title to the Building automatically vested in Lone Butte by operation of Paragraph 8(C) of the Genstar Lease. However, title to all "removable personal property" situated on the Leased Premises remained with the lessee, pursuant to Paragraph 8(C) of the Genstar Lease. Paragraph 1(F) of the Genstar Lease defines "removable personal property" as including "all furniture, fixtures, trade fixtures and equipment which is placed upon or used in conjunction with the premises by Lessee affixed to the buildings, improvements or land and includes by way of illustration but not of limitation that set forth on Exhibit "A" attached hereto." This definition encompasses the Equipment, but not the Building which was an "improvement" which became the property of Lone Butte upon termination. Exhibit "A" to the Genstar Lease does not list the Building.

22. On June 3, 1991, Lone Butte and International Rubber entered into Lease No. B-GR-61-TT (the "International Rubber Lease"), whereby Lone Butte subleased to International Rubber the Leased Premises. At the insistence of Milton LaPanta, copies of the Security Agreement and the April 1990 Equipment Lease were attached as exhibits to the International Rubber Lease, for the purpose of providing Lone Butte with notice of Bruce Johnson's claimed ownership of the Equipment, as an encumbrancer.

23. International Rubber failed to pay for land, water, and security for a period of four months from November 1991 through March 1992, resulting in an amount due to Lone Butte of $17,007.75. The International Rubber Lease required International Rubber to eliminate the waste tires from the Leased Premises by shipping two (2) tractor trailer loads of tires (approximately 3,000 tires) per week until completely depleted. The Lease authorized Lone Butte to assess a penalty of $1,500.00 against International Rubber for each failure to ship two (2) truck loads per week. International Rubber failed to ship the waste tires as required by the Lease and was assessed a penalty of $37,500.00 by Lone Butte.

24. A fire occurred at the Leased Premises on February 19, 1992, which caused damage to the Building and the Equipment. On March 3, 1992, Lone Butte locked up of the Leased Premises and has restricted and continues to restrict access to the Leased Premises. Lone Butte terminated the International Rubber Lease on April 3, 1992. International Rubber failed to remove the waste tires from the Leased Premises and otherwise leave the

premises in a clean and orderly condition as required by the International Rubber Lease.

25. On May 3, 1992. Lone Butte notified International Rubber that Lone Butte retained possession and claimed a lien (the "Landlord's Lien") for payment of rent in the amount of $17,007.75 and penalty assessment in the amount of $37,500.00. By letter dated June 3, 1992, Lone Butte provided Bruce Johnson with notice that the International Rubber Lease had been terminated and notice of the Landlord's Lien. In this letter, Lone's Butte counsel, Michael P. Upshaw, asked Bruce Johnson to supply evidence of rental payments made by International Rubber under the April 1990 Equipment Lease. By letter dated June 10, 1992, Gary Nelson requested International Rubber's counsel, Philip C. Tower, to provide proof of Bruce Johnson's ownership interest in the Equipment and repeated the request for proof of lease payments. These requests for documentation were repeated in letters by Lone Butte's counsel dated July 20, 1992, October 22, 1992, and April 30, 1993. However, Bruce Johnson did not supply the requested information until after suit was filed.

26. By letter dated December 2, 1992, Bruce Johnson advised Gary Nelson that he would be coming to Arizona within the succeeding 30 to 45 days to make arrangments for removal of the Equipment and the Building from the Leased Premises. Bruce Johnson subsequently went to the Leased Premises for this purpose on January 13, 1993, but was denied access by Lone Butte.

27. On January 13, 1993, the Equipment located on the Leased Premises had a fair market value of

$150,000.00. This figure takes into account depreciation and damage to the Equipment caused by the February 19, 1992 fire.

28. The cost of removing and properly disposing of the approximately one million (1,000,000) waste tires stockpiled on the Leased Premises is $675,000.00.

29. As a consequence of the continued presence of the approximately one million (1,000,000) waste tires on the Leased Premises, Lone Butte has lost rentals of $160,000.00.

30. Before Tonson entered into the Purchase Agreement with GSX Polymers in 1987, it was involved as a guarantor with a waste tire processing business and associated waste tire dump in Andover, Minnesota operated by Waste Recycling, Inc., a corporation owned by Milton LaPanta. As evidenced by the Second Amemded Complaint filed by the Minnesota Attorney General's Office in the matter of State of Minnesota, et al. v. Milton J. LaPanta, Waste Recycling, Inc., and Tonson, Inc., Case No. C6-88-9640, State of Minnesota Tenth Judicial District, the Minnesota Pollution Control Agency issued a "Request for Abatement Action" to LaPanta, Waste Recycling, and Tonson for either surrender or removal of the waste tires and a guarantee in January 1987. However, LaPanta, Waste Recycling, and Tonson did not fulfill their obligations under the stipulation, and a series of fires occurred at the site in 1988 and 1989, in cluding a tire pile fire in February 1989 which burned for three days. It eventually became necessary for the State of Minnesota to take control of the site and cleanup the waste tire pile to

abate the public safety and environmental hazards presented by the waste tires.

CONCLUSIONS OF LAW

1. International Rubber failed to perform its obligations to Lone Butte under the International Rubber Lease and is indebted to Lone Butte as follow: (1) $17,007.75 for delinquent rental and other payments: (2) $37,500.00 in penalties assessed for failure to remove two truckloads of waste tires on a weekly basis; and (3) $675,000.00 for the cost of removing the approximately one million (1,000,000) waste tires from the Leased Premises.

2. Tonson assumed responsibility for removing the approximately one million (1,000,000) waste tires from the Leased Premises pursuant to the Purchase Agreement. In addition, Tonson had a duty to remove the waste tires under the Genstar Lease.

3. Bruce Johnson is responsible for the liabilities of Tonson, including the corporation's obligation to remve the approximately one million (1,000,000) waste tires from the Leased Premises, under the principles of piercing the corporate veil. Tonson was merely the "alter ego" of Bruce Johnson. At the times relevant to this litigation, Bruce Johnson was the sole shareholder of Tonson, and was personally involved in and funded Tonson's acquisition of the Genstar business at the Leased Premises pursuant to the Purchase Agreement. In addition, the minutes of the shareholder meetings for Tonson show that it was Bruce Johnson, the sole shareholder, not Milton LaPanta, the president and director, who made the major management decisions for Tonson and controlled

the corporation's destiny. Finally, the record shows that Bruce Johnson supplied substantially all of Tonson's funding, and that Bruce Johnson owned most, if not all, of the corporation's operating assets. It is appropriate to pierce the corporate veil under these circumstances and hold Bruce Johnson accountable for Tonson's liabilities.

4. The Security Agreement given by Tonson to Bruce Johnson encompassed the approximately one million (1,000,000) waste tires acquired by Tonson pursuant to the Purchase Agreement. When Bruce Johnson foreclosed upon the Security Agreement in July 1989, he assumed title to all property of Tonson located in Minnesota, Illinois, and Arizona, including the waste tires. Accordingly, Bruce Johnson is the owner of and is responsible for the continued presence of the waste tires on the Leased Premises. The continued presence of the waste tires on the Leased Premises constitutes a nuisance and a continuing trespass, and Bruce Johnson has been unjustly enriched thereby.

5. Bruce Johnson is the owner of the Equipment. However, Lone Butte is the owner of the Building. Title to the Building automatically vested in Lone Butte in March 1991, when the Genstar Lease was terminated. The Building was an "improvement," not "removable personal property" under the Genstar Lease and pursuant to Paragraph 8(C) of that Lease became the property of Lone Butte when the Lease terminated. This conclusion is also compelled by 25 C.F.R. Sec. 162.9, which provides as follows: "Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease." There

is no provision in the Genstar Lease which specifically excepts the Building from Paragraph 8(C).

6. Lone Butte never acknowledged Bruce Johnson as the owner of either the Equipment or the Building. The fact that copies of the Security Agreement and the April 1990 Equipment Lease were attached as exhibits to the International Rubber Lease put Lone Butte on notice of Bruce Johnson's ownership claim. Following the fire and the lock-up of the Leased Premises and the termination of the International Rubber Lease, Lone Butte questioned Bruce Johnson's claim by repeatedly requesting documentary proof of both his title and rental payments made by International Rubber under the April 1990 Equipment Lease. Lone Butte's conduct was reasonable under the circumstances.

7. Bruce Johnson is barred from claiming that Lone Butte converted the Equipment when it denied him access to the Leased Premises on January 13, 1993, because at that time Bruce Johnson did not have the right to immediate possession of the Equipment. The April 1990 Equipment Lease was still in effect in January 1993, because Milton LaPanta and CV93-CV93-International Rubber were still making rental payments to Bruce Johnson in the form of promissory notes at that time. Moreover, Lone Butte's conduct in any event did not constitute a conversion of the Equipment, because Lone Butte reasonably questioned Bruce Johnson's ownership claim and was merely safeguarding and preserving the property pending resolution of the ownership issue.

8. The facts of this case show that Bruce Johnson consciously pursued a course of conduct with respect to

the approximately one million (1,000,000) waste tires stockpiled on the Leased Premises knowing that the tires created a substantial risk of significant harm to others. Bruce Johnson was well aware of the public safety and environmental hazards posed by waste tire piles when he funded Tonson's acquisition of the ongoing business at the Leased Premises from GSX Polymers pursuant to the Purchase Agreement, as evidenced by the problems experienced at that time and subsequently by Tonson and Milton LaPanta in Andover, Minnesota. Accordingly, an award of punitive damages against Bruce Johnson is appropriate.

JUDGMENT

Upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following Judgment:

1. Judgment in favor of Lone Butte Industrial Development Corporation against International Rubber, Inc. on the First Claim for Relief as set forth by the First Amended Complaint for $729,507.75.

2. Judgment in favor of Bruce Johnson on the Second Claim for Relief as set forth by the First Amended Complaint, to-wit, that Bruce Johnson is the owner of the Equipment.

3. Judgment in favor of Lone Butte Industrial Development Corporation against Bruce Johnson for $160,000.00 for lost rental on the Third, Fourth, and Fifth Claims for Relief as set forth in the First Amended Complaint for trespass, nuisance, and unjust enrichment, respectively.

4. Judgment for Lone Butte Industrial Development Corporation against Bruce Johnson for $500,000.00 in punitive damages.

5. Judgment for Lone Butte Industrial Development Corporation on Bruce Johnson's Counterclaim for conversion.

6. Bruce Johnson shall remove all of the waste tires from the Leased Premises within 60 days of the entry of this Judgment and Order. Thereafter, Lone Butte shall permit Bruce Johnson to remove the Equipment from the Leased Premises.

7. If Bruce Johnson fails to remove all of the waste tires from the Leased Premises within the 60-day period, Lone Butte may auction the Equipment and apply the proceeds to first cover any costs incurred in conducting the auction and second to fund the removal of the waste tires from the Leased Premises. Lone Butte shall provide Bruce Johnson with written notice of the auction at least fifteen business days in advance of the auction. If the net proceeds of the auction are insufficient to cover the full cost of removing the waste tires, a judgment for the deficiency shall be entered against Bruce Johnson upon application to the Court. If there are any funds remaining following the deduction for auction expenses and removing all of the waste tires from the Leased Premises, the surplus shall be refunded to Bruce Johnson within seven business days.

8. The parties shall each bear their respective attorneys fees and costs of suit.

9. All monies awarded hereunder shall bear interest at 10% per annum until paid.

DATED this 28th day of September 1995.

/s/ Hon. Dallas De Lowe
Dallas De Lowe
Presiding Judge

APPENDIX B

IN THE COURT OF APPEALS OF THE GILA RIVER INDIAN COMMUNITY

LONE BUTTE INDUSTRIAL DEVELOPMENT CORPORATION, a corporation chartered by the Gila River Indian Community, **Plaintiff-Appellee,** **v.** **INTERNATIONAL RUBBER, INC., a defunct Arizona Corporation, Bruce Johnson,** **Defendants-Appellants.**	**Order** **Case No. CV93-357SC**
BRUCE JOHNSON, **Counter-claimant-Appellant,** **v.** **LONE BUTTE INDUSTRIAL DEVELOPMENT CORPORATION, a corporation chartered by the Gila River Indian Community,** **Counter-defendant-Appellee.**	

Appellant Bruce Johnson filed a Notice of Appeal in this matter on October 23, 1995 and on November 14,

1995, filed a Petition For Appeal and Notice of Appeal From Findings of Fact, Conclusions of Law and Judgment Dated September 28, 1995.

The Court, having considered this matter at a March 27, 1999 hearing; therefore,

IT IS ORDERED That the *GRIC Rules of Appellate Procedure* govern this appeal. *See GRIC Courts and Procedures*, § 1.201.

Section 1.201(D) of the *GRIC Rules of Appellate Procedure* provides in part that "[t]he appellate court shall review the permanent record of the trial court." *Id.* Therefore, the permanent record in this case will be reviewed for purposes of this appeal. The *Arizona Rules of Civil Appellate Procedure* may be used to govern matters of procedure where the *GRIC Rules of Appellate Procedure* are silent so long as they are consistent with tribal law and custom. *See GRIC Rules of Civil Procedure.* § 1.302 ("In deciding any matter that is not covered by the laws, ordinances or traditional customs and usages of the Community, or by applicable federal laws or regulations, the court shall be guided by the laws of the State of Arizona."). Because the *GRIC Rules of Appellate Procedure* do not provide specific directions governing the submission of briefs in civil appeals, Rules 12 - 15 of the *Arizona Rules of Civil Appellate Procedure* will govern the filing of briefs in this appeal except as otherwise provided by this Court.

ACCORDINGLY, IT IS ORDERED That appellant's brief shall be filed within forty (40) days after receipt of this order. Appellee's brief shall be filed within forty (40) days after service of the appellant's brief. The appellant

may file a reply brief within twenty (20) days after service of the appellee's brief, or the appellant may file a notice that no reply brief will be filed.

IT IS FURTHER ORDERED That five (5) copies of each brief shall be filed with the Sacaton Court Clerk.

IT IS FURTHER ORDERED That the briefs filed by the respective parties in this case address the following issues with supporting argument and cited legal authority:

1. What are the appropriate standards this Court should apply in reviewing the legal determinations and factual findings of the trial court?

2. Whether new evidence, not available to the trial court, should be considered on appeal.

3. What specific errors of law and/or erroneous factual findings, if any, did the trial court make?

IT IS FURTHER ORDERED That should either party in this matter elect not to file a brief in this matter, the party shall promptly notify the Court by letter stating the reasons why no brief is being filed.

DATED this 15th day of April, 1999
By Order of the GRIC Court of Appeals

/s/ William Thorne
WILLIAM A. THORNE, JR.,
Chief Judge

CERTIFICATE OF MAILING

I hereby certify that on this 15th day of April, 1999, I mailed a true and correct copy of the within instrument to:

Clerk of the Sacaton Court
Gila River Indian Community
P.O. Box 368
Sacaton, Arizona 85247

Richard J. Sundberg
Attorney at Law
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Douglas A. Jorden
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